IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicants	:	Jack J. Johnson et al.			
Application No.	:	09/851,483	Confirmation No.	:	3783
Filed	:	May 8, 2001			
For	:	BIDDING FOR TELECOMMUNICATIONS TRAFFIC AND BILLING FOR SERVICE			
Group Art Unit	:	3696			
Examiner	:	Ojo O. Oyebisi			

REPLY BRIEF UNDER 37 C.F.R. § 41.41

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Sir:

Appellants submit this Reply Brief under 37 C.F.R. § 41.41 in response to the Examiner's Answer mailed on September 19, 2008.

I. ARGUMENT

Claims 46-51, 53-67, 69-71, 82-88, 90-103, 118-121, and 123 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Taylor in view of Harrington. Appellants submit that the examiner has failed to establish a *prima facie* case of obviousness for rejecting the claims, both in the January 29, 2008 Final Office Action from which this appeal was filed, and now in the September 19, 2008 Examiner's Answer. Appellants maintain the arguments made in the June 30, 2008 Appeal Brief in this regard, namely, that the cited Taylor and Harrington patents fail to teach or suggest all the features of appellants' claims, and that the examiner has failed to articulate a proper reason in support of the obviousness rejection. In this Reply Brief, appellants specifically address a statement made in the Examiner's Answer with regard to the claimed "bidding data."

As background, the method of independent claim 46 includes, in a moderating computer, among others, "receiving bids to provide telecommunication service . . . , processing the bids to produce processed bid data, and storing the bids and the processed bid data in a database of the moderating computer as first bidding data" and "transmitting at least a portion of the first bidding data to at least a portion of the at least two telecommunication Providers." Independent claims 53, 63, 82, and 88 similarly involve providing a telecommunication Provider with data or information related to bids received from *other* telecommunication Providers. Claim 53, in element (b), refers to this data or information as "first bidding data." Claim 63, in element (c), refers to this as "first switch data." Claims 82 and 88, in elements (c) and (e), respectively, refer to this as "processed bid information." For simplicity, the arguments in appellants' Appeal Brief, and now in this Reply Brief, refer to the phrase "bidding data" as specifically recited in

claim 46. However, these arguments similarly apply to the "first bidding data," "first switch data," and "processed bid information" of the other independent claims involved in this appeal.

In the Examiner's Answer, the examiner continues to assert that "Taylor does not explicitly disclose [in] the Moderating computer, transmitting at least a portion of the first bidding data to at least a portion of the at least two telecommunication Providers." (Examiner's Answer, p. 5). The examiner also now asserts that the claimed "bidding data" is "nothing but data" in an attempt to support the combination of Taylor with Harrington:

> . . . Taylor does mention that the originating service center transmits bid request to the telecommunication providers (see col. 8 lines 1-50). Thus, since bid request and bidding data are *nothing but data*, and presuming the bid time is not expired, originating service center can obviously transmit a portion of the bidding data already received from the telecommunication service centers back to the telecommunication service centers for correction.

(Examiner's Answer, p. 5) (emphasis added). Not only is the examiner's assertion that the claimed "bidding data" is "nothing but data" incorrect, but it does not even address the failure of the cited combination to teach or suggest all the claimed features.

Contrary to the examiner's position, the claimed "bidding data" is not just "data," but rather is a term defined within the claim itself: "storing the bids and the processed bid data in a database of the moderating computer as first *bidding data*." Thus, the claimed "bidding data" is a combination of the received bids and the processed bid data. If the type of data transmitted in appellants' claims were irrelevant, as the examiner seems to assert, then the claims would reflect this and simply recite "data." They do not. Instead, the claims clearly recite something *more*, and in doing so advantageously provide for the transmission of "bidding data" to telecommunication Providers. It is improper for the examiner to read this element out of the claims by likening it to "nothing but data."

The examiner's position on this claim element also fails to address that the cited combination of Taylor with Harrington does not teach or suggest all the claimed features. In the Examiner's Answer, it is correctly acknowledged that Taylor does not teach or suggest the transmission of "bidding data" as claimed (notwithstanding the examiner's reference to "bidding data" as "nothing but data"). However, the examiner still broadly maintains that Harrington discloses this feature. In doing so, the examiner fails to address the shortcomings of Harrington described in appellant's Appeal Brief, namely, that Harrington in no way discloses providing the claimed "bidding data" to a telecommunication Provider, as is recited in appellants' claims.

The examiner again refers to the confirmation screen of Harrington as disclosing the transmission of the claimed "bidding data." (*See, e.g.*, Examiner's Answer, pp. 5-6). Also, similar to statements in the Final Office Action, the examiner makes the conclusory statement that "users/bidders as mentioned in Harrington reads on the telecommunication providers as recited in the claims – since Harrington's users/bidders can be anybody." (Examiner's Answer, p. 6). These positions, however, still fail to demonstrate how Harrington teaches or suggests transmitting "bidding data" to a telecommunication Provider as claimed. The claimed "bidding data," as described above, is a combination of the received bids and processed bid data. Therefore, for Harrington to disclose this feature of the claims, Harrington would have to disclose the transmission of data that includes *received bids for telecommunication service*, as well as data resulting from *the processing of those bids*. This simply is not the case, as Harrington is completely unrelated to providing telecommunication service. Furthermore, the bidders of Harrington are not "telecommunication Providers" as claimed either – they are users of an auction web site for municipal bonds. The examiner cannot simply conclude that the users of Harrington read on this claim element. For a *prima facie* case of obviousness, the examiner

must demonstrate with particularity how this claim element is shown in Harrington. The Examiner has failed to meet his burden, and instead has resorted to generalizations in an attempt to illustrate what is in fact neither disclosed nor suggested by either Taylor or Harrington.

Accordingly, for these reasons alone, as well as for the reasons provided in the previously-filed Appeal Brief, the rejection of the claims under section 103 should be reversed.

II. CONCLUSION

Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the outstanding rejection of claims 46-51, 53-67, 69-71, 82-88, 90-103, 118-121, and 123, remand the application to the examiner, and direct the examiner to issue a Notice of Allowance.

No fees are believed to be due. However, please charge any payments due or credit any overpayments to our Deposit Account No. 08-0219.

Respectfully submitted,

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/Victor F. Souto/
Victor F. Souto
Registration No. 33,458
Attorney for Applicants

Wilmer Cutler Pickering
Hale and Dorr LLP
Customer No. 28089
399 Park Avenue
New York, New York 10022
Tel: 212-230-8800
Fax: 212-230-8888